

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

**SIERRA CLUB; WEST VIRGINIA
HIGHLANDS CONSERVANCY, INC.; and
WEST VIRGINIA RIVERS COALITION, INC.,**

Plaintiffs,

v.

CIVIL ACTION NO. 3:24-cv-00130

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; MICHAEL S.
REGAN, Administrator, United States
Environmental Protection Agency; and
ADAM ORTIZ, Regional Administrator,
United States Environmental Protection
Agency, Region III,**

Defendants.

**MOTION OF THE WEST VIRGINIA COAL
ASSOCIATION TO INTERVENE AS A DEFENDANT**

Pursuant to Rule 24(a) and (b) of the Federal Rules of Civil Procedure, the West Virginia Coal Association (“WVCA”) moves to intervene in the above-captioned matter as a defendant to oppose Plaintiffs’ request for declaratory and injunctive relief, oppose the proposed Consent Decree put out to public notice on March 29, 2024, and to assert the defenses set forth in the Answer attached as **Exhibit A**.

Plaintiffs claim that the United States Environmental Protection Agency (“EPA”) has a nondiscretionary duty to establish Total Maximum Daily Loads (“TMDLs”) for ionic toxicity in certain waters in the Lower Guyandotte River Watershed in West Virginia. Complaint, ¶¶ 2-3. They seek an order requiring EPA “to develop, as soon as possible, ionic toxicity TMDLs for streams in the Lower Guyandotte River Watershed.” Complaint, p. 13. Presumably, in seeking the development of such TMDLs, Plaintiffs seek the imposition of ionic toxicity effluent limits for

all mining-related discharges into the identified waters. The WVCA has at least one member who holds an NPDES permit covering discharges into certain of the streams in the Lower Guyandotte Watershed for which these TMDLs would apply and whose NPDES permit would therefore be subject to new effluent limits under the proposed TMDLs.

WVCA is not currently a party to this action, and none of the existing parties are able to adequately protect the rights and interests of the WVCA in this proceeding. Therefore, the WVCA moves to intervene as a defendant. The basis for this motion is more fully set forth in WVCA's accompanying memorandum of law.

Respectfully submitted,

WEST VIRGINIA COAL ASSOCIATION

By Counsel

/s/ Christopher M. Hunter
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May 2024, I filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which will cause a copy to be served upon counsel of record.

/s/ Christopher M. Hunter
Christopher M. Hunter (WVBN 9768)